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SEP 05 2007

OFFICE OF PETITIONS

In re Application of :
Douglas R. Elliott :
Application No. 09/481,126 : ON PETITION
Filed: January 11, 2000 :
Attorney Docket No. TEQ 01117 PTUS :

This is a decision on the petition, filed June 21, 2007, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

A review of the record disclose that the application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed November 7, 2006, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on January 8, 2007. See MPEP 1215.04.

It is noted that a Notice of Allowance and a Notice of Allowability were mailed on June 20, 2007. Since this application was abandoned on January 8, 2007 the examiner had no procedural authority with respect to the abandoned application on or after January 8, 2007. Lorenz v. Finkl, 333 F.2d 885, 891 142 USPQ 26, 30 (CCPA 1964). While it is unfortunate that, notwithstanding the lack of a proper response to the outstanding Office action, the examiner subsequently issued a Notice of Allowability and a Notice of Allowance, such actions by the examiner were performed without proper authority, and thus, had no force and effect. The examiner has no authority to revive an abandoned application. Id. The examiner's indication of patentable subject matter in an abandoned application will not have the effect of saving that application from abandonment. Lorenz v. Finkl, supra. As the Notice of Allowance of June 20, 2007, and the Notice of Allowability of June 20, 2007, were issued in an abandoned application, they were issued without proper authority on the part of the examiner. As such, they have no force and effect and are vacated.

In view of the above, the application is *sua sponte* withdrawn from issue. Petitioner is advised that the issue fee paid on June 29, 2007, is refunded; however if this application is again allowed, petitioner may request that the fee be applied towards the issue fee required by the new Notice of Allowance.¹

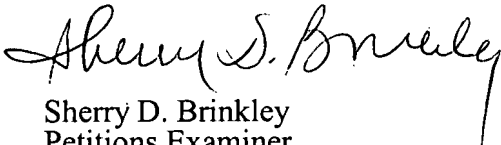
The present petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the Appeal Brief and requisite fee; (2) the petition fee of \$750; and (3) an adequate statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).

Since the \$1,080 extension of time fee submitted with this petition on June 21, 2007 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The application is being referred to Technology Center AU 3693 for appropriate action by the examiner on the response filed June 21, 2007.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. Inquiries relating to the prosecution of the application should be referred to the Technology Center.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions

¹ The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.